

Senate Daily Reader

Tuesday, January 27, 2004

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State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0383

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1054** - 01/16/2004

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise the allowable share provision of the escrow fund
2 for tobacco litigation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-50B-8 be amended to read as follows:

5 10-50B-8. A tobacco product manufacturer that places funds into escrow pursuant to
6 subdivision 10-50B-7(2) shall receive the interest or other appreciation on such funds as earned.

7 Such funds themselves shall be released from escrow only under the following circumstances:

8 (1) To pay a judgment or settlement on any released claim brought against such tobacco
9 product manufacturer by the state or any releasing party located or residing in the
10 state. Funds shall be released from escrow under this subdivision in the order in
11 which they were placed into escrow and only to the extent and at the time necessary
12 to make payments required under such judgment or settlement;

13 (2) To the extent that a tobacco product manufacturer establishes that the amount it was
14 required to place into escrow on account of units sold in the state in a particular year
15 was greater than ~~the state's allocable share of the total payments that such~~



~~manufacturer would have been required to make in that year under the Master Settlement Agreement payments, as determined pursuant to section IX (i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, as such payments are determined pursuant to section IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in section IX(i)(3) of the Master Settlement Agreement other than the inflation adjustment;~~ the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

- (3) To the extent not released from escrow under subdivision (1) or (2) of this section, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

Section 2. That chapter 10-50B be amended by adding thereto a NEW SECTION to read as follows:

If any portion of the amendment to subdivision 10-50B-8(2) made by this Act is held by a court of competent jurisdiction to be unconstitutional, then subdivision 10-50B-8(2) shall be deemed to be repealed in its entirety. If that repeal of subdivision 10-50B-8(2) is thereafter held by a court of competent jurisdiction to render § 10-50B-8 unconstitutional, then this Act shall be deemed repealed, and subdivision 10-50B-8(2) restored as if no such amendment had been made. Neither any holding of unconstitutionality nor the repeal of subdivision 10-50B-8(2) affects, impairs, or invalidates any other portion of § 10-50B-8, or the application of such section to any other person or circumstance, and such remaining portions of § 10-50B-8 shall at all times continue in full force and effect.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0228

SENATE TAXATION COMMITTEE ENGROSSED NO. **SB 29** - 01/23/2004

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to establish one rate for the telephone gross receipts tax and
2 to provide uniform methods to administer the tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-33-21 be amended to read as follows:

5 10-33-21. All persons, corporations, cooperatives, and associations engaged in furnishing
6 and providing telephone and exchange service comprising rental and toll service by means of
7 wired circuits and otherwise and whose annual gross receipts are less than fifty million dollars
8 shall be taxed on the basis of gross receipts, ~~according to one of the two following schedules at~~
9 the rate of four percent. Any person, corporation, cooperative, association, or other entity subject
10 to the tax imposed by this section may add the tax imposed, or the average equivalent thereof,
11 to its bill for the service. ~~Whichever schedule provides the lesser percentage of tax shall be~~
12 ~~applied by the Department of Revenue.~~

13 _____ SCHEDULE A

14 Percentage of



1	Average Number of Customers	Tax on
2	Per Mile of Line (Density)	Gross Revenue
3	Not more than 1	2
4	More than 1, but not more than 2	3
5	More than 2	4

6 ~~_____ SCHEDULE B~~

7			Percentage of
8			Tax on
9	Gross Annual Revenue		Gross Revenue
10	Not more than	\$ 15,000	2
11	More than \$15,000, but not more than	20,000	3
12	More than \$20,000, but not more than	50,000,000	4

13 However, no telephone company operating in this state ~~shall~~ may be taxed less than an
14 amount equal to fifty cents per year per telephone serviced. Further, each telephone company
15 that was taxed in the five percent tax category for the calendar year 2001 shall pay an amount
16 of tax to each school district of not less than the tax received by such school district in 2002 for
17 the years 2003 and 2004; ~~and each year thereafter, the tax paid shall be as provided in~~
18 ~~SCHEDULE A or SCHEDULE B of this section.~~

19 Section 2. That § 10-33-22 be amended to read as follows:

20 10-33-22. ~~The term, average number of customers per mile of line (density), as used in~~
21 ~~§ 10-33-21 means total number of subscribers, customers, or patrons in this state, divided by~~
22 ~~the total number of miles of line of such person, company, corporation, cooperative, or~~
23 ~~association in this state. The term, line, as used in §§ 10-33-21 and 10-33-22 shall not~~
24 ~~necessarily mean a single circuit but shall be the aggregate of all communications transmission~~
25 ~~circuits, voice or otherwise, and associated attachments and appurtenances thereto. Such~~

1 ~~persons, corporations, cooperatives, and associations are herein referred to as "companies."~~ The
2 term, company, means any person, corporation, cooperative, association, or other entity
3 providing telephone and exchange service, rental and toll service.

4 Section 3. That § 10-33-27 be amended to read as follows:

5 10-33-27. If the tax levied under § 10-33-21 is not paid on the due date a penalty of up to
6 five percent of the amount of the tax ~~shall~~ may be imposed for each month of delinquency, and
7 if any telephone company ~~shall fail~~ fails to report its gross receipts to the secretary of revenue
8 and regulation, ~~said the~~ the company ~~shall~~ may be penalized up to twenty-five percent of the tax
9 due. ~~Provided, further, that such~~ Such tax may be enforced and collected by distress and sale of
10 the personal and real property of such company in the same manner as is now provided for the
11 collection of real property taxes and mobile home taxes pursuant to chapter 10-22. The tax
12 levied under § 10-33-21 shall be administered pursuant to chapter 10-59, unless a contrary
13 provision in this chapter applies.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0376

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 59** - 01/23/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public records kept
2 by state agencies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-27-28 be amended to read as follows:

5 1-27-28. Terms used in §§ 1-27-29 to 1-27-32, inclusive, mean:

6 (1) "Private entity," any person or entity that is not a public entity as defined by
7 subdivision 3-21-1(2);

8 (2) "State agency," ~~each~~ any association, authority, board, commission, committee,
9 council, department, division, ~~state~~ office, officer, task force, ~~and their officers, legal~~
10 ~~representatives, consultants, or other agents~~ or other agent of the state vested with the
11 authority to exercise any portion of the state's sovereignty. The term does not include
12 the Legislature, the Unified Judicial System, the Public Utilities Commission, the
13 Department of Environment and Natural Resources, any law enforcement agency, or
14 any unit of local government, or joint venture comprised of local governments;

15 (3) "Financial investigation, examination, or audit," any examination conducted by a



1 state agency of a private entity's proprietary information or trade secret information;

2 (4) "Proprietary information," information on pricing, costs, revenue, taxes, market
3 share, customers, and personnel held by private entities and used for that private
4 entity's business purposes;

5 (5) "Trade secret," information, including a formula, pattern, compilation, program,
6 device, method, technique or process, that:

7 (a) Derives independent economic value, actual or potential, from not being
8 generally known to, and not being readily ascertainable by proper means by,
9 other persons who can obtain economic value from its disclosure or use; and

10 (b) Is the subject of efforts that are reasonable under the circumstances to
11 maintain its secrecy.

12 Information includes a formula, pattern, compilation, program, device, method,
13 technique, process, proprietary, trade secret, formula, marketing plans, and strategic
14 planning information.

15 Section 2. That § 1-27-29 be amended to read as follows:

16 1-27-29. ~~A No state agency which is authorized by law to investigate, examine may disclose~~
17 ~~that it is conducting a financial investigation, examination, or audit the papers, books, records,~~
18 ~~financial condition, or other information held by or concerning of a private entity may not~~
19 ~~disclose that it is conducting such an investigation, examination, or audit while the financial~~
20 ~~investigation, examination, or audit is ongoing, except as provided by §§ 1-27-28 to 1-27-32,~~
21 ~~inclusive § 1-27-31.~~

22 Section 3. That § 1-27-30 be amended to read as follows:

23 1-27-30. All proprietary or trade secret information obtained by a state agency from or
24 concerning ~~the a private entity by the state agency as a result of such an investigation,~~

1 ~~examination, or audit~~ is confidential, except as provided by §§ ~~1-27-28 to 1-27-32, inclusive~~
2 § 1-27-31.

3 Section 4. That § 1-27-31 be amended to read as follows:

4 1-27-31. A state agency may ~~not~~ disclose that it is ~~investigating, examining, or auditing~~
5 conducting a financial investigation, examination, or audit of a private entity; and ~~may only~~
6 disclose the information obtained from such an investigation, examination, or audit as follows:

- 7 (1) To the private entity being investigated, examined, or audited;
- 8 (2) To those persons whom the private entity has authorized in writing to receive such
9 information;
- 10 (3) To the officers, employees, or legal representatives of any other state agency which
11 requests the information in writing for the purpose of investigating and enforcing
12 civil or criminal matters. The written request will specify the particular information
13 desired and the purpose for which the information is requested;
- 14 (4) To any administrative or judicial body if the information is directly related to the
15 resolution of an issue in the proceeding, or pursuant to an administrative or judicial
16 order. However, no person may use a subpoena, discovery, or other applicable
17 statutes to obtain such information;
- 18 (5) To another state pursuant to an agreement between the State of South Dakota and the
19 other state, but only if the other state agrees to keep the information confidential as
20 set forth in §§ 1-27-28 to 1-27-32, inclusive;
- 21 (6) To the attorney general, state's attorney, or any state, federal, or local law
22 enforcement officer;
- 23 (7) To a federal agency pursuant to the provisions of federal law;
- 24 (8) To the extent necessary to submit any final reports or filings which are otherwise

1 required by law to be prepared or filed;

2 (9) ~~For investigations to protect the natural resources of the state; or~~

3 (10) To comply with federal law, rules, or program delegation requirements; or

4 (11) To the extent necessary to protect the health or welfare of the citizens of this state or
5 nation pursuant to a court order obtained under the same process as orders issued
6 pursuant to § 15-6-65(b).

7 Section 5. That § 1-27-32 be amended to read as follows:

8 1-27-32. Disclosure of information made confidential by §§ 1-27-28 to 1-27-32, inclusive,
9 except as provided in § 1-27-31, is a ~~Class 6 felony~~ Class 1 misdemeanor.

10 Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The provisions of this chapter do not supersede more specific provisions regarding public
13 access or confidentiality elsewhere in state or federal law.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0380

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 61** - 01/23/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to permit certain officers to authorize that booking
2 photographs be made public.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23-5-7 be amended to read as follows:

5 23-5-7. All photographs, impressions, measurements, descriptions, or records including
6 confidential criminal investigative information, taken or made as provided for in § 23-5-6 shall
7 be filed and preserved by the department or institution where made or taken and ~~shall~~ may not
8 be published, transferred, or circulated outside such department or institutions, nor exhibited
9 to the public or any person or persons except duly authorized law enforcement officers unless
10 the subject of such photograph, measurement, description, or other record becomes a fugitive
11 from justice, or escapes from a penal institution. However, this section ~~shall~~ does not apply to
12 the release of information allowed pursuant to § 24-2-20. Further, a booking photograph,
13 without numerical identifying information, may be made public at the discretion of the
14 executive officer of the arresting agency.

